

Judge Berman

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

09 CV 8296

ASIAN MARINE SALVAGE LTD.,

Plaintiff,

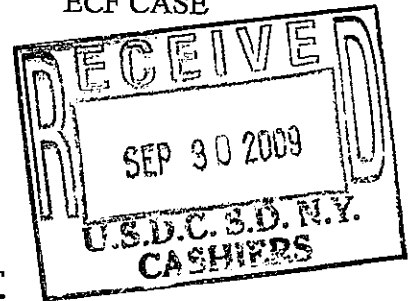
- against -

NORTHERN SHIPPING JOINT STOCK COMPANY,

Defendant.

09 CV

ECF CASE



VERIFIED COMPLAINT

Plaintiff, ASIAN MARINE SALVAGE LTD. (hereinafter "Plaintiff"), by and through its attorneys, Lennon, Murphy & Lennon, LLC, as and for its Verified Complaint against the Defendant, NORTHERN SHIPPING JOINT STOCK COMPANY (hereinafter "Northern Shipping" or "Defendant" alleges upon information and belief as follows:

1. This is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure and 28 United States Code § 1333.
2. At all times material to this action, Plaintiff was, and still is, a foreign company duly organized and operating under the laws of St. Vincent and The Grenadines, with a principal place of business located at 24F-1, No. 29 Hai Bian Road, Kaohsiung, Taiwan, Rep of China.
3. Upon information and belief, Northern Shipping was, and still is, a foreign corporation, or other business entity, having its office at NO.278 Ton Duc Thang Str, Dong Da District, Ha Noi City, Vietnam.
4. At all material times, Plaintiff was the operator of the salvage tug "SALVAGE DUKE".

5. Upon information and belief, Defendant Northern Shipping was, at all times material hereto, the owner of the motor tanker "LONG BIEN".

6. On or about 0852 hrs August 3, 2009 local time, Defendant, through its agent, non-party Sunscot and Company (hereinafter "Sunscot"), approached Plaintiff, operator of the salvage tug " SALVAGE DUKE" , for a quote for service of towage to tow the LONG BIEN from where she was to either Subic Bay in Philippine or the port of Hai Phong in Vietnam. *See email from Defendant to Plaintiff dated August 3, 2009 attached hereto as Exhibit "1."*

7. Upon information and belief, LONG BIEN had main engine problems and was drifting at the position of 17-43N 116-25E.

8. Upon information and belief, the LONG BIEN contained 6,350 metric tons of fertilizer on board in her cargo holds.

9. In response to Defendant's request, Plaintiff offered "SALVAGE DUKE" of 7,00BHP and 95 tons bollard pull which had just departed from Hong Kong and was on her way to Kaohsiung, Taiwan, and gave an estimated time of arrival at the LONG BIEN in "approximate 24-28 hrs".

10. Defendant accepted Plaintiff's offer and agreed to use the "SALVAGE DUKE."

11. Plaintiff instructed "SALVAGE DUKE" at 2015 hrs of the same day to deviate from her original course to Kaohsiung and proceed toward the ship "Long Bien". *See Plaintiff's emails to Defendant and Defendant's emails to Plaintiff dated 0949 hrs August 4, 2009 annexed hereto as Exhibit "2."*

12. Plaintiff and Defendant agreed to the following terms:

Towage of " Long Bien" /Loaded with bulk fertilizer.

From approximate lat 17-43N Long 116-25E to Da Nan.

M.V. "Salvage Duke" 7,200 BHP 95 t bp.

Daily Hire Rate USD20,000.-/PDPR, including fuel, lubes & water whilst under tow.
Delivery/Redelivery: Up on tug's arrival at casualty location / Da Nang
Mob / Demob: USD25,000.- / US\$55,000.-/both lump sum
Contract : Towhire
Minimum hire /cancellation: 5 days hire
Payment : every 5 days in advance
Offer subject to Tug availability / terms & conditions.

See email dated 0856 hrs August 4, 2009 from Defendant to Plaintiff annexed hereto as Exhibit "3."

13. Plaintiff sent a written contract memorializing the parties' agreement in format of "Towhire" agreement to Defendant. *See Plaintiff's e-mail to Defendant dated 0909 hrs August 4, 2009, annexed hereto as Exhibit "4."*

14. Subsequently, Defendant advised Plaintiff at 1827 hrs August 4, 2009 that the ship's main engine has been fixed by her crew, and tug assistance was no more required. *See Defendants' email to Plaintiff annexed hereto as Exhibit "5."*

15. Plaintiff immediately notified the "SALVAGE DUKE" that her assistance was no longer required, who returned the same day to Kaohsiung.

16. Plaintiff performed all of its obligations to Defendant pursuant to the agreement between Plaintiff and Defendant.

17. As a result of Defendant's breach of its agreement with Plaintiff, Plaintiff has suffered damages in the amount of \$225,000.00, which damages were foreseeable by Defendant at the time Defendant entered into the agreement with Plaintiff.

18. Due to and as a result of Defendant's breach of the Towhire agreement, Plaintiff has sustained damages in the principal amount of \$225,000.00, exclusive of interest, arbitration costs and attorneys' fees. *See breakdown of amounts due annexed hereto as Exhibit "6."*

19. Pursuant to the Towhire agreement, disputes arising thereunder are to be submitted to arbitration in London with English law to apply.

20. Plaintiff intends to commence London arbitration proceedings against Defendant.

21. Interest, costs and attorneys fees are routinely awarded to the prevailing party in such proceedings. As best as can now be estimated, Plaintiff expects to recover the following amounts as the prevailing party in the substantive proceedings:

A.	Principal claim:	\$ 225,000.00
B.	Interest on claim: 2 years at 3% per annum	\$13,500.00
C.	Estimated recoverable attorney's fees and costs:	\$75,000.00
Total		\$313,500.00

22. The Defendant cannot be found within this District within the meaning of Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure, but, upon information and belief, Defendant has, or will have during the pendency of this action, assets within this District and subject to the jurisdiction of this Court, held in the hands of one or more garnishees which are believed to be due and owing to the Defendant. *See Affidavit in Support of Maritime Attachment annexed hereto as Exhibit "7."*

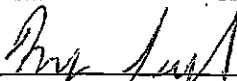
23. The Plaintiff seeks an order from this court directing the Clerk of Court to issue Process of Maritime Attachment and Garnishment pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, attaching, *inter alia*, any assets of the Defendants held by the aforesaid garnishee for the purpose of obtaining personal jurisdiction over the Defendant, and to secure the Plaintiff's claims as described above.

WHEREFORE, Plaintiff prays:

- A. That process in due form of law issue against the Defendant, citing it to appear and answer under oath all and singular the matters alleged in the Verified Complaint;
- B. That pursuant to 9 U.S.C. §§ 201. *et seq.* and/or the doctrine of comity this Court recognize and confirm any foreign judgment or arbitration award rendered on the claims had herein as a Judgment of this Court;
- C. That since the Defendant cannot be found within this District pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, this Court issue an Order directing the Clerk of Court to issue Process of Maritime Attachment and Garnishment pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, attaching all goods, chattels, credits, letters of credit, bills of lading, effects, debts and monies, tangible or intangible, or any other funds held by any garnishee within the District which are due and owing to the Defendant, in the amount of **\$313,500.00** calculated to date to secure the Plaintiff's claims, and that all persons claiming any interest in the same be cited to appear and pursuant to Supplemental Admiralty Rule B answer the matters alleged in the Complaint;
- D. That this Court enter judgment against Defendant on the claims set forth herein;
- E. That this Court retain jurisdiction over this matter through the entry of any judgment or award associated with any of the claims currently pending, or which may be initiated in the future, including any appeals thereof;
- F. That this Court award Plaintiff its attorney's fees and costs of this action; and
- G. That the Plaintiff have such other, further and different relief as the Court may deem just and proper.

Dated: September 30, 2009

The Plaintiff,
ASIAN MARINE SALVAGE LTD.

By: 
Nancy R. Siegel
Coleen A. McEvoy
Charles E. Murphy
LENNON, MURPHY & LENNON, LLC
420 Lexington Ave., Suite 300
New York, NY 10170
(212) 490-6050 – phone
(212) 490-6070 – fax
nrs@lenmur.com
cam@lenmur.com
cem@lenmur.com

ATTORNEY'S VERIFICATION

1. My name is Nancy R. Siegel.
2. I am over 18 years of age, of sound mind, capable of making this Verification, and fully competent to testify to all matters stated herein.
3. I am an attorney in the firm of Lennon, Murphy & Lennon, LLC, attorneys for the Plaintiff.
4. I have read the foregoing Verified Complaint and know the contents thereof and believe the same to be true and accurate to the best of my knowledge, information and belief.
5. The reason why this Verification is being made by the deponent and not by the Plaintiff is that the Plaintiff is a business organization with no officers or directors now within this District.
6. The source of my knowledge and the grounds for my belief are the statements made, and the documents and information received from, the Plaintiff and agents and/or representatives of the Plaintiff.
7. I am authorized to make this Verification on behalf of the Plaintiff.

Dated: September 30, 2009



Nancy R. Siegel

EXHIBIT 1

Exhibit

From: "Suncot" <Suncot@suncot.com>

Date: 3 August 2009 09:30:12 GMT+08:00

To: "Asian Marine - Steve J. Hulme " <asus487@seed.net.tw>, "Asian Marine Kaohsiung " <asus487@so-net.net.tw>

Subject: LONG BIEN IN POSITION 17-43 NORTH AND 116 25 EAST

TO : ASIA MARINE

FM : SUNSCOT HONG KONG

GOOD MORNING STEVE,

REF : LONG BIEN ENGINE PROBLEM 17-43 NORTH 116-25 EAST

WE ARE SUNSCOT AND COMPANY BASED IN HONG KONG SINCE 1983 AND OUR CONTACT

DETAILS ARE AS FOLLOWS :-

SUNSCOT AND COMPANY
ROOM 1505 JUBILEE CENTRE
46, LOCKHART ROAD
WANCHAI
HONG KONG

PHONE (852) 2865-1889

FAX (852) 2861-0298

E-MAIL " SUNSCOT@SUNSCOT.COM "

WEB SITE " WWW.SUNSCOT.COM "

OUR PRINCIPALS VESSEL " LONG BIEN " HAS SUFFERED A MAIN ENGINE FAILURE IN POSITION 17-43 NORTH AND 116-25 EAST AND HER DETAILS ARE AS FOLLOWS :-

LONG BIEN (EX - ESPERANZA ACE)
DWT: 6,846 MT, ON 7.493 M DRAFT
BUILT: 11/1989 IWAGI ZOSEN K.K. -IWAG JAPAN
VIETNAM FLAG TWEEN DECK CARGO VESSEL
CLASS: VIETNAM REGISTER

LOA: 97.13M, LBP: 89.95M, BREADTH: 18.00M
HOLDS: 2 / HATCHES: 2

THE LONG BIEN LOADED 6,350 MTS BULK FERTILISER FROM KAOHSIUNG FOR
DISCHARGE IN
PORT KELANG.

AS ADVISED SHE HAS SUFFERED A MAIN ENGINE FAILURE IN POSITION 17-43N,
116-25E.

CAN YOU PLEASE QUOTE TO TOW HER TO SUBIC BAY OR HAIPHONG

HER LOADED DRAFT IS ABOUT 7.5 METERS.

Kind regards

Keith Martin

Sunscot and Company Limited

Phone (852) 2865-1889

Fax (852) 2861-0298

Mobile (852) 9467-0364

e-mail sunscot@sunscot.com

HTTP www.sunscot.com

EXHIBIT 2

Exhibit _

From: "S_DUKE" <S_duke@SkyFile.com>
Date: 4 August 2009 09:49:14 GMT+08:00
To: sunscot@sunscot.com
Cc: amc@asian-marine.com.tw
Subject: " Mv Long Bien"

04 July 2009

To: Ric Sunscot/Kieth

From: Salvage Duke

Subject: "Mv Long bien"

=====

(1.) 2015hrs.lt. yesterday altered course towards "Mv Long Bien"

position. after received a telecon advise from Mr.

K.T.Lu. Course was set to 115t to passed N n E of

Pratas due to TD in lat-19.4n long-115.8e moving N.

(2.) 0730hrs.lt. today course was altered to 214 to pass E of Pratas

TS GONI in lat-20.3n long-114.2e moving NW.

(3.) 0900hrs.lt. Received new position of "Mv Long Bien" lat-18.02n

long-118.00e, course reroute towards Casualty n set

course to 150t. Eta 0700hrs.lt. tomorrow 05 July 2009.

at present speed of 9.0kts.

(4.) WX- Wind- Se- Force- 30kts. Sea- rough. Please advise particulars

of Mv Long Bien n contact details.

B/Rgds

Capt. Rea

Exhibit

From: "Sunscot" <Sunscot@sunscot.com>
Date: 3 August 2009 17:49:55 GMT+08:00
To: "Asian Marine - Steve J. Hulme " <asus487@seed.net.tw>
Subject: MV LONG BIEN - TOW TO DANANG

To : Northern Shipping
Fm : Sunscot Hong Kong

Steve / Keith

REF : LONG BIEN – SALVAGE
DUKE

The Owners have agreed to use the "SALVAGE DUKE " and have authorised us to counter as follows :-

- Towage of "Long Bien" / Loaded with Bulk fertilizer
- From Approx Lat 17-43N Long 116-25E to Da Nang
- M.V. "Salvage Duke" 7200 Bhp 95t Bp
- Daily Hire Rate USD 20,000-00/- PDPR, Including Fuel, Lubes & Water whilst under tow
- Delivery / Redelivery Up on Tug's arrival at Casualty Location / Da Nang
- Mob / Demob USD 25,000 / USD 50,000/ both lump sum
- Contract Towhire

- Minimum hire / Cancellation 5 Days Hire
- Payment Every 5 Days in advance
- Offer Subject To Tug Availability / Terms & Conditions
- Counter valid for reply by 2000 HK time today.

The Address of Northern Shipping, owners of the Long Bien is as follows :-

Northern Shipping Company,
278, Ton Duc Thang,
Dong Da District,
Hanoi,
Vietnam

After redelivery of the tug we would be looking at debiting ASIAN MARINE with a USD 5,000 debit note for commission – is this OK with you.

Kind regards
Keith Martin
Sunscot and Company Limited
Phone (852) 2865-1889
Fax (852) 2861-0298
Mobile (852) 9467-0364
e-mail sunscot@sunscot.com
HTTP www.sunscot.com

Exhibit 3

From: "S.J.Hulme" <amc@asian-marine.com.tw>

Date: 3 August 2009 11:16:45 GMT+08:00

To: Sunscot <Sunscot@sunscot.com>

Cc: Marine Asian <amc@asian-marine.com.tw>

Subject: Fwd: LONG BIEN IN POSITION 17-43 NORTH AND 116 25 EAST

Hi Kieth,

Approximately 24 - 28 Hrs, subject to weather. Salvage Duke has just, in the last hour departed Hong Kong opl at Economical speed for Kaohsiung but is still prompt available to divert at any time, subject to availability / terms & conditions.

Regards,

Steve

Begin forwarded message:

EXHIBIT 3

Exhibit

From: "Suncot" <Suncot@suncot.com>

Date: 4 August 2009 08:56:26 GMT+08:00

To: "Asian Marine - Steve J. Hulme " <asus487@seed.net.tw>

Subject: MV LONG BIEN - TOW TO DANANG

Steve / Keith

REF : LONG BIEN – SALVAGE
DUKE

Last night I advised Northern Shipping that the minimum that the Owners of the

"SALVAGE DUKE " will agree is as follows :-

- Towage of "Long Bien" / Loaded with Bulk fertilizer
- From Approx Lat 17-43N Long 116-25E to Da Nang
- M.V. "Salvage Duke" 7200 Bhp 95t Bp
- Daily Hire Rate USD 20,000-00/- PDPR, Including Fuel, Lubes & Water whilst under tow
- Delivery / Redelivery Up on Tug's arrival at Casualty Location / Da Nang
- Mob / Demob USD 25,000 / USD 55,000/ both lump sum
- Contract Towhire
- Minimum hire / Cancellation 5 Days Hire
- Payment Every 5 Days in advance

- Offer Subject To Tug Availability / Terms & Conditions

Verbally they said OK and I am awaiting their written confirmation as they have notified their Insurance of everything.

I will revert very shortly with the full contact details of the Long Bien.

Kind regards

Keith Martin

Sunscot and Company Limited

Phone (852) 2865-1889

Fax (852) 2861-0298

Mobile (852) 9467-0364

e-mail sunscot@sunscot.com

HTTP www.sunscot.com

EXHIBIT 4

Exhibit

From: "S.J.Hulme" <amc@asian-marine.com.tw>

Date: 4 August 2009 09:09:18 GMT+08:00

To: Sunscot <Sunscot@sunscot.com>

Cc: Marine Asian <amc@asian-marine.com.tw>, "Lu K.T. Lu" <ktluamc@hotmail.com>

Subject: Fwd: MV LONG BIEN - TOW TO DANANG

Dear Kieth,

As per Mr Lu's telephone counter offer with you, of yesterday evening.
Enclosed is a draft copy of the contract with the agreed Mob /demob
& Commission Payments.

- Mob / demob USD 25,000 / USD 55,000 / Both Lump Sum
- Confirm commission to Sunscot as USD 4,000/- Lump Sum payment only

Please advise if any comments to the draft contract & then I can make up
the originals.

Best Regards,

Steve J. Hulme

Operations Manager

Asian Marine Co. Ltd.,

24-1, no 29 Hai Bian Road,

Kaohsiung, Taiwan

Post Code: 80248

Office Tel: +886-7-2692700

Office Fax:- +886-7-2692702

Mob:- +886-936-252199

E-Mail:-

asianmarine@asian-marine.com.tw

amc@asian-marine.com.tw

Website: www.asian-marine.com.tw

Recommended by International Salvage Union (ISU) European Tugowners Association (ETA) The Baltic and International Maritime Council (BIMCO)	1. Date and place of Agreement 3 rd August, 2009 / Kaohsiung	RECOMMENDED INTERNATIONAL OCEAN TOWAGE AGREEMENT (DAILY HIRE) CODE NAME: "TOWHIRE" PART I	
	2. Tugowner/place of business Asian Marine Co. Ltd., 24F-1, Nos 29 Hai Bian Road, Kaohsiung, Taiwan Off Tel: +886 7 269 2700 Off Fax: +886 7 269 2702 E Mail: amc@asian-marine.com.tw	3. Hirer/place of business Northern Shipping Joint Stock Company (NOSCO), No 278 Ton Duc Thang Str., Dong Da Distr, Ha Noi City, Vietnam Off Tel: +84 4 3851 4377 Off Fax: +84 4 3511 3347 E Mail: nosco@fpt.vn	
	4. Tow (name and type) MV Long Bien / Tween Deck Cargo Vessel	5. Gross tonnage/displacement tonnage Dwt 6846 M/t	
	6. Maximum length/maximum breadth & towing draught (fore and aft) L 97.13m x B 18m x M Draft 7.493m	7. Flag and place of registry Vietnam	
	8. Registered owners Sea Box 3	9. Classification society VR	
Printed by BIMCO's idea	10. P. & I. liability insurers	11. General condition of tow Seaworthy with M/Engine Breakdown	
	12. Particulars of cargo and/or ballast and/or other property on board the tow Loaded with 6,350 Mts Bulk Fertiliser		
	13. Tug (name and type) MV "Salvage Duke" / Ocean - Going Tug	14. Flag and place of registry St Vincent & The Grenadines / Kingstown	
	15. Gross tonnage Grt 1059t	16. Classification Society RMS	
	17. P. & I. liability insurers Shipowner's Mutual Protection & Indemnity Association, Luxembourg		
Copyright, published by The Baltic and International Maritime Council (BIMCO)	18. Certificated bollard pull (if any) 95t BP	19. Indicated horse power 7200 BHP	
	20. Estimated daily average bunker oil consumption in good weather and smooth water (a) at full towing power with tow N/A (b) at full sea speed without tow N/A		
	21. Winches and main towing gear Equipped with Double drum Towing Winch fitted with 2 x 58mm Diameter x 1100 Mtr Tow Wires		
	(continued)		

This document is a computer generated TOWHIRE form printed by authority of BIMCO. Any insertion or deletion to the form must be clearly visible. In the event of any modification made to the pre-printed text of this document which is not clearly visible, the text of the original BIMCO approved document shall apply. BIMCO assumes no responsibility for any loss, damage or expense as a result of discrepancies between the original BIMCO approved document and this computer generated document.

(continued)

"TOWHIRE" INTERNATIONAL OCEAN TOWAGE AGREEMENT (DAILY HIRE)

PART I

22. Nature of service(s) (Cl. 1) Towage Only		
23. Place of departure (Cl. 7) Upon Arrival Approx Position of Casualty Lat 17-43N Long 116-25E	24. Date of departure 4th-5th August, 2009	25. Place of destination (Cl. 8) Da Nang, Vietnam
26. Contemplated route (Cl. 17) Most Direct & always at the Tug Master's discretion, with regard to safety, in consultation with the Master of the Tow		
27. Notices (state number of hours/days notice of arrival of tug at place of departure and to whom to be given) N/A		28. Notices (state number of hours/days notice of arrival of tug and tow at place of destination and to whom to be given) N/A
29. Riding crew to be provided by (also state number to be provided) (Cl. 9) N/A		30. If riding crew provided by Tugowner state amount per man per day payable by Hirer (Cl. 9) N/A
31. Mobilisation payment (optional, only to be filled in if expressly agreed) (Cl. 2(e)) USD 25,000/-		32. Demobilisation payment (optional, only to be filled in if expressly agreed) (Cl. 2(f)) USD 55,000/-
33. Daily rate of hire and advance payment period(s) (Cl. 2(a)) Daily Hire Rate USD 20,000/- PDPR Including Fuel, Lubes & Water, Every 5 Days In Advance		34. Payment of hire and for riding crew (if any) (state currency, mode of payment, place of payment and bank account) (Cl. 2(b)) By Telegraphic Transfer In United States Dollars Only, without deduction, up on receipt of Tug Owner's Faxed / Electronic Invoice & to the Bank Account Details Stated Therein.
35. Minimum period of hire, if any agreed 5 Days Hire USD 100,000/-		36. Commencement of period of hire (Cl. 2(a)) Up On Tug Arrival at the Place of the drifting casualty.
37. Termination of period of hire (Cl. 2(a)) Da Nang / Pilot Away on tug's release		38. Cancelling date, if any agreed (Cl. 15(e)) N/A
39. Interest rate (%) per annum to run from (state number of days) after any sum is due (Cl. 5) 3% Per Annum / 5 Banking Days		40. Security (state sum, by whom to be provided and when) (optional, only to be filled in if expressly agreed) (Cl. 6) N/A
41. Cost of bunker oil and lubricating oils (state whether included or excluded from daily rate of hire; if included state type of bunkers and cost per metric tonne (per litre for lubricating oils) (Cl. 2(d)) Included in Daily Hire Rate		
42. Cancellation fee (Cl. 16) As Per Box 15 / 5 Days Hire = USD 100,000/-		43. Numbers of additional clauses, covering special provisions, if agreed Nil

(continued)

"TOWHIRE" INTERNATIONAL OCEAN TOWAGE AGREEMENT (DAILY HIRE)**PART I**

It is mutually agreed between the party mentioned in Box 2 (hereinafter called "the Tugowner") and the party mentioned in Box 3 (hereinafter called "the Hirer") that the Tugowner shall, subject to the terms and conditions of this Agreement which consists of PART I including additional clauses, if any agreed and stated in Box 43, and PART II, use his best endeavours to perform the towage or other service(s) as set out herein. In the event of a conflict of terms and conditions, the provisions of PART I and any additional clauses, if agreed, shall prevail over those of PART II to the extent of such conflict but no further.

Signature (Tugowner) Asian Marine Co. Ltd.	Signature (Hirer) Northern Shipping Joint Stock Company
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WORKING COPY

WORKING COPY

PART II

"Towhire" International Ocean Towage Agreement (Daily Hire)

1. The Tow	1	towing (including such costs or expenses as those of raising the anchor of the Tow or tending or casting off any moorings of the Tow).	78
"The Tow" shall include any vessel, craft or object of whatsoever nature including anything carried thereon as described in PART I to which the Tugowner agrees to render the service(s) as set out in <u>Box 22</u> .	2	(v) The cost of Insurance of the Tow shall be the sole responsibility of the Hirer to provide.	79
2. Price and Conditions of Payment	3	(c) All taxes, charges, costs, and expenses payable by the Hirer shall be paid by the Hirer direct to those entitled to them. If, however, any such tax, charge, cost or expense is in fact paid by or on behalf of the Tugowner (notwithstanding that the Tugowner shall under no circumstances be under any obligation to make such payments on behalf of the Hirer) the Hirer shall reimburse the Tugowner on the basis of the actual cost to the Tugowner upon presentation of invoice.	80
(a) The Hirer shall pay the Tugowner the amount of hire set out in <u>Box 33</u> per day or pro rata for part of a day (hereinafter called the "Tug's Daily Rate of Hire") from the time stated in <u>Box 36</u> until the time stated in <u>Box 37</u> .	4		81
(b) (i) The Tug's Daily Rate of Hire shall be payable in advance as set out in <u>Box 33</u> ; all hire or equivalent compensation hereunder shall be fully and irrevocably earned and non-returnable on a daily basis.	5		82
(ii) In the event of the Tug being lost, hire shall cease as of the date of the loss. If the date of the loss cannot be ascertained, then, in addition to any other sums which may be due, half the rate of hire shall be paid, calculated from the date the Tug was last reported until the calculated arrival of the Tug at her destination provided such period does not exceed 14 days.	6		83
(iii) In the event of the Tow being lost, hire shall continue until the Tug arrives at its destination or such nearer place, at the Tugowner's discretion, provided such period does not exceed 14 days.	7		84
(c) Within 14 days of the termination of the services hereunder by the Tugowner, the Tugowner will, if necessary, adjust in conformance with the terms of this Agreement hire paid in advance. Any hire paid by the Hirer but not earned under this Agreement and which is refundable thereunder shall be refunded to the Hirer within 14 days thereafter.	8		85
(d) (i) In the event that the Daily Rate of Hire includes the cost of bunkers and the average price per metric tonne of bunkers actually paid by the Tugowner differs from the amounts specified in <u>Box 41</u> then the Hirer or the Tugowner, as the case may be, shall pay to the other the difference per metric tonne for every metric tonne consumed during the voyage. The average price specified above shall be the average of the prices per metric tonne actually paid by the Tugowner on the basis of quantities purchased at the last bunkering port prior to departure on the voyage, any bunkering port during the voyage, and the first bunkering port after completion of the voyage. The log book of the Tug shall be prima facie evidence of the quantity of bunkers consumed.	9		86
(ii) In the event that the Daily Rate of Hire excludes the cost of bunkers then the Hirer shall pay to the Tugowner the cost of the bunkers and lubricants consumed by the Tug in fulfilling the terms of this Agreement. The Tug shall be delivered with sufficient bunkers and lubricants on board for the tow to the first bunkering port (if any) or destination and be re-delivered with not less than sufficient bunkers to reach the next bunkering stage en route to the Tug's next port of call. The Hirer upon delivery and the Tugowner upon re-delivery shall pay for the bunkers and lubricants on board at the current contract price at the time at the port of delivery and re-delivery or at the nearest bunkering port.	10		87
*) (e) If agreed, the Hirer shall pay the sum set out in <u>Box 31</u> by way of a mobilisation charge. This sum shall be paid on or before the commencement of the Tug's voyage to the place of departure, and shall be non-returnable, Tug and/or Tow lost or not lost.	11		88
*) (f) If agreed, the Hirer shall pay the sum set out in <u>Box 32</u> by way of a demobilisation charge. This amount shall be paid tow lost or not lost, on or before the termination by the Tugowner of his services under this Agreement.	12		89
(g) The Hire and any other sums payable to the Tugowner under this Agreement (or any part thereof) shall be due, payable and paid without any discount, deduction, set-off, lien, claim or counterclaim.	13		90
*) Sub-clauses (e) and (f) are optional and shall only apply if agreed and stated in <u>Boxes 31</u> and <u>32</u> , respectively.	14		91
3. Additional Charges and Extra Costs	15		92
(a) The Hirer shall appoint his agents at the place of departure and place of destination and ports of call or refuge and shall provide such agents with adequate funds as required.	16		93
(b) The Hirer shall bear and pay as and when they fall due:-	17		94
(i) All port expenses, pilotage charges, harbour and canal dues and all other expenses of a similar nature levied upon or payable in respect of both the Tug and the Tow.	18		95
(ii) All taxes, (other than those normally payable by the Tugowner in the country where he has his principal place of business and in the country where the Tug is registered) stamp duties or other levies payable in respect of or in connection with this Agreement or the payments of hire or other sums payable under this Agreement or the services to be performed under or in pursuance of this Agreement, any Customs or Excise duties and any costs, dues or expenses payable in respect of any necessary permits or licences.	19		96
(iii) The cost of the services of any assisting tugs when deemed necessary by the Tugmaster or prescribed by Port or other Authorities.	20		97
(iv) All costs and expenses necessary for the preparation of the Tow for	21		98
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PART II

"Towhire" International Ocean Towing Agreement (Daily Hire)

ional equipment and all other appurtenances free of cost during and for the purposes of the towage or other services to be provided under this Agreement.	151	(i) If there is any delay or delays (other than delay caused by the Tug) at the place of departure exceeding in aggregate 21 running days.	225
	152	(ii) If there is any delay or delays (other than a delay caused by the Tug) at any port or place of call or refuge exceeding in aggregate 21 running days.	226
	153	(iii) If the security as may be required according to Box 40 is not given within 7 running days of the Tugowner's request to provide security.	227
	154	(iv) If the Hirer has not accepted the Tow within 7 running days of arrival at the place of destination.	228
	155	(v) If any amount payable under this Agreement has not been paid within 7 running days of the date such sums are due.	229
	156	(d) Before exercising his option of withdrawing from this Agreement as aforesaid, the Tugowner shall if practicable give the Hirer 48 hours notice (Saturdays, Sundays and public Holidays excluded) of his intention so to withdraw.	230
	157	(e) Should the Tug not be ready to commence the towage at the latest at midnight on the date, if any, indicated in Box 38, the Hirer shall have the option of cancelling this Agreement and shall be entitled to claim damages for detention if due to the wilful default of the Tugowner. Should the Tugowner anticipate that the Tug will not be ready, he shall notify the Hirer thereof by telex, cable or otherwise in writing without delay stating the expected date of the Tug's readiness and ask whether the Hirer will exercise his option to cancel. Such option to cancel must be exercised within 48 hours after the receipt of the Tugowner's notice, otherwise the third day after the date stated in the Tugowner's notice shall be deemed to be the new agreed date to commence the towage in accordance with this Agreement.	231
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PART II

"Towhire" International Ocean Towage Agreement (Daily Hire)

(ii) The members of the Riding Crew provided by the Tugowner or any other person whom the Tugowner provides on board the Tow;	302	sub-contractors of such parties. The Tugowner or Hirer shall be deemed to be acting as agent or trustee of and for the benefit of all such persons, entities and vessels set forth above but only for the limited purpose of contracting for the extension of such benefits to such persons, bodies and vessels.	379
(iii) Any other person on board the Tug who is not a servant or agent of the Hirer or otherwise on board on behalf of or at the request of the Hirer.	303		380
(b) The Hirer will indemnify the Tugowner in respect of any liability adjudged due or claim reasonably compromised arising from injury or death occurring during the towage or other service hereunder to any of the following persons:	304		381
(i) The Master and members of the crew of the Tow and any other servant or agents of the Hirer;	305		382
(ii) Any other person on board the Tow for whatever purpose except the members of the Riding Crew or any other persons whom the Tugowner provides on board the Tow pursuant to their obligations under this Agreement.	306		
2. (a) The following shall be for the sole account of the Tugowner without any recourse to the Hirer, his servants, or agents, whether or not the same is due to breach of contract, negligence or any other fault on the part of the Hirer, his servants or agents:	307	20. War and Other Difficulties	383
(i) Loss or damage of whatsoever nature, howsoever caused to or sustained by the Tug or any property on board the Tug.	308	(a) If owing to any Hostilities; War or Civil War; Acts of Terrorism; Acts of Public Enemies; Arrest or Restraint of Princes, Rulers or People; Insurrections; Riots or Civil Commotions; Disturbances; Acts of God; Epidemics; Quarantine; Ice; Labour Troubles; Labour Obstructions; Strikes; Lock-outs; Embargoes; Seizure of the Tow under Legal Process or for any other cause outside the control of the Tugowner it would be impossible or unsafe or commercially impracticable for the Tug or Tow or both to leave or attempt to leave the place of departure or any port or place of call or refuge or to reach or enter or attempt to reach or enter the port or place of destination of the Tow and there deliver the Tow and leave again, all of which safety and without unreasonable delay, the Tug may leave the Tow or any part thereof at the place of departure or any other port or place where the Hirer may take repossession and this shall be deemed a due fulfillment by the Tugowner of this Agreement and any outstanding sums and all extra costs of delivery at such place and any storage costs incurred by the Tugowner shall thereupon become due and payable by the Hirer.	384
(ii) Loss or damage of whatsoever nature caused to or suffered by third parties or their property by reason of contact with the Tug or obstruction created by the presence of the Tug.	309	(b) If the performance of this Agreement or the voyage to the place of departure would in the ordinary course of events require the Tug and/or Tow to pass through or near to an area where after this Agreement is made there is or there appears to be danger of such area being blocked or passage through being restricted or made hazardous by reason of War, Acts of Terrorism, Trapping of Vessels, Civil War, Acts of Public Enemies, Arrest or Restraint of Princes, Rulers or People, Insurrection, Riots or Civil Commotions or Disturbances or other dangers of a similar nature then:	385
(iii) Loss or damage of whatsoever nature suffered by the Tugowner or by third parties in consequence of the loss or damage referred to in (i) and (ii) above.	310	(i) If the Tug has not entered such area en route to the place of departure, or having entered has become trapped therein, for a period of more than 14 days either party hereto shall be entitled to terminate this Agreement by telex, cable or other written notice in which event, save for liabilities already accrued neither party shall be under any further liability to the other but the Tugowner shall not be bound to repay to the Hirer any payments already made and all amounts due shall remain payable.	386
(iv) Any liability in respect of wreck removal or in respect of the expense of moving or lighting or buoying the Tug or in respect of preventing or abating pollution originating from the Tug.	311	(ii) If the Tug and Tow whilst en route to the place of destination have not entered such area during the course of the towage or other service the Hirer shall continue to pay the Daily Rate of Hire for every day by which the towage is prolonged by reason of waiting for such area to become clear and/or safe and/or by reason of proceeding by a longer route to avoid or pass such area in safety.	387
The Tugowner will indemnify the Hirer in respect of any liability adjudged due to a third party or any claim by a third party reasonably compromised arising out of any such loss or damage. The Tugowner shall not in any circumstances be liable for any loss or damage suffered by the Hirer or caused to or sustained by the Tow in consequence of loss or damage howsoever caused to or sustained by the Tug or any property on board the Tug.	312	(iii) If the Tug and Tow whilst en route to the place of destination have become trapped in such area during the course of the towage or other service either party shall, after a period of 14 days from the commencement of such trapping, be entitled to terminate this Agreement by telex, cable or other written notice, in which event, save for liabilities already accrued, neither party shall be under any further liability to the other but the Tugowner shall not be bound to repay to the Hirer any payment already made and all amounts due shall remain payable.	388
(b) The following shall be for the sole account of the Hirer without any recourse to the Tugowner, his servants or agents, whether or not the same is due to breach of contract, negligence or any fault on the part of the Tugowner, his servants or agents:	313		389
(i) Loss or damage of whatsoever nature, howsoever caused to or sustained by the Tow.	314		390
(ii) Loss or damage of whatsoever nature caused to or suffered by third parties or their property by reason of contact with the Tow or obstruction created by the presence of the Tow.	315		391
(iii) Loss or damage of whatsoever nature suffered by the Hirer or by third parties in consequence of the loss or damage referred to in (i) and (ii) above.	316		392
(iv) Any liability in respect of wreck removal or in respect of the expense of moving or lighting or buoying the Tow or in respect of preventing or abating pollution originating from the Tow.	317		393
The Hirer will indemnify the Tugowner in respect of any liability adjudged due to a third party or any claim by a third party reasonably compromised arising out of any such loss or damage but the Hirer shall not in any circumstances be liable for any loss or damage suffered by the Tugowner or caused to or sustained by the Tug in consequence of loss or damage, howsoever caused to or sustained by the Tow.	318		394
3. Save for the provisions of Clauses 11, 12, 13 and 16 neither the Tugowner nor the Hirer shall be liable to the other party for loss of profit, loss of use, loss of production or any other indirect or consequential damage for any reason whatsoever.	319		395
4. Notwithstanding any provisions of this Agreement to the contrary, the Tugowner shall have the benefit of all limitations of, and exemptions from, liability accorded to the Owners or Chartered Owners of Vessels by any applicable statute or rule of law for the time being in force and the same benefits are to apply regardless of the form of signatures given to this Agreement.	320		396
19. Himalaya Clause	321		397
All exceptions, exemptions, defences, immunities, limitations of liability, indemnities, privileges and conditions granted or provided by this Agreement or by any applicable statute rule or regulation for the benefit of the Tugowner or Hirer shall also apply to and be for the benefit of demise charterers, sub-contractors, operators, master, officers and crew of the Tug or Tow and to and be for the benefit of all bodies corporate parent of, subsidiary to, affiliated with or under the same management as either of them, as well as all directors, officers, servants and agents of the same and to and be for the benefit of all parties performing services within the scope of this Agreement for or on behalf of the Tug or Tugowner or Hirer as servants, agents and	322		398
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PART II

"Towhire" International Ocean Towage Agreement (Daily Hire)

ing terms, conditions or provisions which shall remain and subsist in full force and effect.	454	and all rights whatsoever and howsoever shall be absolutely barred and extinguished.	470
(b) For the purpose of this Agreement unless the context otherwise requires the singular shall include the plural and vice versa.	455		471
(c) Any extension of time granted by the Tugowner to the Hirer or any Indulgence shown relating to the time limits set out in this Agreement shall not be a waiver of the Tugowner's right under this Agreement to act upon the Hirer's failure to comply with the time limits.	456		
	457	25. Law and Jurisdiction	472
	458	This Agreement shall be construed in accordance with and governed by English law. Any dispute or difference which may arise out of or in connection with this Agreement or the services to be performed hereunder shall be referred to the High Court of Justice in London, submitted to and settled by Arbitration held in London to that the Rules & Practice of London Maritime Arbitrator's Association, including the Rules for small claims shall be adopted & apply.	473
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24. Time for Suit	462	No suit shall be brought in any other state or jurisdiction except that either party shall have the option to bring proceedings in rem to obtain conservative seizure or other similar remedy against any vessel or property owned by the other party in any state or jurisdiction where such vessel or property may be found.	477
Save for the indemnity provisions under <u>Clause 18</u> of this Agreement, any claim which may arise out of or in connection with this Agreement or of any towage or other service to be performed hereunder shall be notified by telex, cable or otherwise in writing within 6 months of delivery of the Tow or of the termination of the towage or other service for any reason whatever, and any suit shall be brought within one year of the time when the cause of action first arose. If either of these conditions is not complied with the claim	463		478
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WORKING COPY

WORKING COPY

EXHIBIT 5

Exhibit

From: "Suncot" <Suncot@suncot.com>
Date: 4 August 2009 18:27:04 GMT+08:00
To: "Asian Marine - Steve J. Hulme " <asus487@seed.net.tw>
Subject: MV LONG BIEN

Steve / Keith

I have been pushing the Owners all day to confirm the hire of the "SALVAGE DUKE " and they kept on saying that there were just waiting for their insurance to confirm the same. I regret to advise that they have now just sent me the following for which I can only apologise :-

QUOTE

From: Anh
Sent: 04 August 2009 18:11
To: Suncot
Subject: MV LONG BIEN

Dear Keith,

Plsd to adv you that our crew member are successful to overcome vsls ME trouble.

As you know the vsls has 6 cylinder and one of piston was damaged.

They sealed that cylinder and steaming with remaining 5 cylinder to Danang to repair. The vsls has just departed thus hiring salvage shud be temporary canceled. Thank you very much for your best asistant and express our deep gratitude to you. With best regards, Anh

UNQUOTE

I can only apologise for this poor outcome – but I was pushing them all day for confirmation of the tug hire.

Kind regards

Keith Martin

Suncot and Company Limited

Phone (852) 2865-1889

Fax (852) 2861-0298

Mobile (852) 9467-0364

e-mail sunscot@sunscot.com

HTTP www.sunscot.com

EXHIBIT 6

BREAKDOWN OF CLAIM

Cancellation Fees – 5 days hire@ \$20,000.00 per day:	\$100,000.00
Charges of Mobilization:	\$25,000.00
Hire – 5 days @ \$20,000.00 per day:	\$100,000.00
TOTAL:	\$225,000.00

EXHIBIT 7

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ASIAN MARINE SALVAGE LTD.,

Plaintiff,

- against -

NORTHERN SHIPPING JOINT STOCK
COMPANY,

Defendant.

09 CV _____

ECF CASE

AFFIDAVIT IN SUPPORT OF PRAYER FOR MARITIME ATTACHMENT

State of Connecticut)
)
County of Fairfield) ss: Southport

Coleen A. McEvoy, being duly sworn, deposes and says:

1. I am a member of the Bar of this Court and represent the Plaintiff herein. I am familiar with the facts of this case and make this Affidavit in support of Plaintiff's prayer for the issuance of a Writ of Maritime Attachment and Garnishment, pursuant to Rule B of the Supplemental Admiralty Rules of the Federal Rules of Civil Procedure.

DEFENDANT IS NOT PRESENT IN THE SOUTHERN DISTRICT OF NEW YORK

2. I have attempted to locate the Defendant NORTHERN SHIPPING JOINT STOCK COMPANY within the Southern District of New York (hereinafter "SDNY"). As part of my investigation to locate the Defendant within the SDNY, I checked the telephone company information directory, as well as the white and yellow pages for New York listed on the Internet or World Wide Web, and did not find any listing for the Defendant. Finally, I checked the New York State Department of Corporations' online database which showed no listings or registration for the Defendant.

3. I submit based on the foregoing that the Defendant cannot be found within the SDNY within the meaning of Rule B of the Supplemental Rules for Admiralty and Maritime Claims and Asset Forfeiture Actions ("Rule B").

DEFENDANT'S PROPERTY MAY BE FOUND IN THE SDNY

4. Upon information and belief, and also based upon payments made by the Plaintiff to the Defendant under the involved contracts which were sent by way of electronic funds transfers routed through New York intermediary banks, the Defendant has, or will have during the pendency of this action, tangible and intangible property as the same is defined under Rule B within the SDNY and subject to the jurisdiction of this Court, held in the hands of garnishees within the SDNY, which are believed to be due and owing to the Defendant.

5. Upon information and belief, in the case of payments made by foreign parties, the vast majority of electronic funds transfers in U.S. dollars pass through banking/financial intermediaries located within the SDNY.

6. Upon information and belief, Defendant has ongoing contractual obligations, or has had such obligations, that require it to make send / receive payments in U.S. dollars. Thus, the likelihood that the Defendant will send / receive future payments through one of the banks named in Schedule "A" to the proposed ORDER DIRECTING CLERK TO ISSUE PROCESS OF MARITIME ATTACHMENT AND GARNISHMENT AND APPOINTING PROCESS SERVER is high and satisfies the reasonable belief threshold. The garnishee banks listed are limited to ones who regularly act as "intermediary banks" to effect wire transfers in U.S. dollars between a foreign originating bank and a foreign beneficiary bank.

PRAYER FOR RELIEF FOR ORDER ALLOWING SPECIAL PROCESS SERVER

7. Plaintiff seeks an Order pursuant to Rule 4(c) of the Federal Rules of Civil Procedure, for an Order appointing Patrick F. Lennon, Kevin J. Lennon, Charles E. Murphy, Nancy R. Peterson, Colleen A. McEvoy, Anne C. LeVasseur, Darin L. Callahan or any other partner, associate, paralegal or agent of Lennon, Murphy & Lennon, LLC, or any process server employed by Gotham Process Servers, in addition to the United States Marshal, to serve the Ex Parte Order and Process of Maritime Attachment and Garnishment, together with any interrogatories, upon the garnishee(s), together with any other garnishee(s) who (based upon information developed subsequent hereto by the Plaintiff) may hold assets of, for or on account of, the Defendant.

8. Plaintiff seeks to serve the prayed for Process of Maritime Attachment and Garnishment with all deliberate speed so that it may be fully protected against the potential of being unable to satisfy a judgment/award ultimately obtained by Plaintiff and entered against the Defendant.

9. To the extent that this application for an Order appointing a special process server with respect to this attachment and garnishment does not involve a restraint of physical property, it is submitted that there is no sound reason to require that the service be effected by the Marshal as it involves simple delivery of the Process of Maritime Attachment and Garnishment to the various garnishees to be identified in the writ and the required use of a Marshal will cause delay, additional expense and provide no benefit in respect of the purpose for which Plaintiff has filed this action.

PRAYER FOR RELIEF TO SERVE LATER IDENTIFIED GARNISHEES

10. Plaintiff also respectfully requests that the Court grant it leave to serve any additional garnishee(s) who may, upon information and belief obtained in the course of this litigation, to be holding, or believed to be holding, property of the Defendants, within the SDNY. Obtaining leave of Court at this time to serve any later identified garnishees will allow for prompt service of the Process of Maritime Attachment and Garnishment without the need to present to the Court amended Process seeking simply to identify other garnishee(s).

PRAYER FOR RELIEF TO DEEM SERVICE CONTINUOUS

11. Further, in order to avoid the need to repetitively serve the garnishees/banks, Plaintiff respectfully seeks further leave of the Court, as set out in the proposed Ex Parte Order for Process of Maritime Attachment, for any process that is served on a garnishee to be deemed effective and continuous service of process throughout any given day on which process is served and throughout the next day, provided that process is served the next day, and to authorize service of process via facsimile or e-mail following initial *in personam* service.

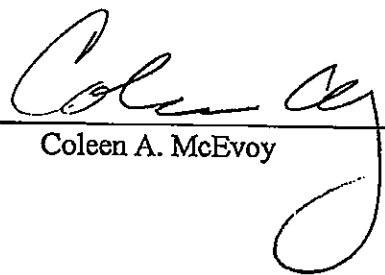
12. Several garnishee banks, including, but not limited to, J.P. Morgan Chase, BNP Paribas, Societe Generale, have refused to consent to deem service of Rule B Orders and Writs continuous which will necessitate parties to serve these garnishees numerous times throughout any given day. In seeking an Ex Parte Order deeming service continuous the Plaintiff relies on the holding on *DNSD Subsea AS v. Oceanografia, S.A. de CV*, 569 F. Supp. 2d 339, 347 (S.D.N.Y. 2008) which, in upholding the propriety of an Ex Parte Order which deemed service continuous, stated as follows:

Clearly, the goal of the continuous service provision contained in the order signed by Judge Karas in this case and by Judge Scheindlin in *Ulisses* was *not* to undermine the Second Circuit's prohibition on the attachment of after-acquired

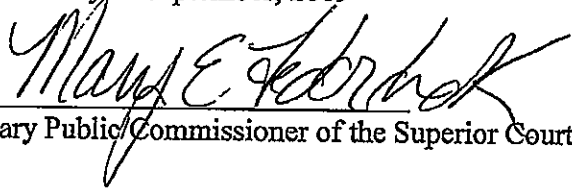
property announced in *Reibor*. Rather, the continuous service provision 'was intended to avoid the absurdity, security problems, and inconvenience of requiring the garnishee banks to accept service repeatedly throughout the day.' *Ulisses*, 415 F. Supp. 2d at 328. Indeed, the absence of such a continuous service provision – either by court order or by consent from the garnishees – would inevitably result in the posting of lawyers and/or process servers at bank offices around the clock in an attempt to capture EFTs at the precise moment of their arrival. Defendant's narrow reading of *Reibor*, would, in effect, overrule the Second Circuit's later holding in *Winter Storm* – something the Second Circuit expressly declined to do in *Aqua Stoli* – by making it virtually impossible to attach EFTs in Rule B cases.

13. The Courts within the Southern District of New York have an interest in preserving the efficacy of the Ex Parte Orders issued therein. As a result, and in order to give effect to the Rule B relief requested herein, the Plaintiff request that the Court issue an Ex Parte Order deeming service continuous.

Dated: September 30, 2009


Coleen A. McEvoy

Sworn and subscribed to before me
this 30th day of September, 2009


Notary Public/Commissioner of the Superior Court

Mary E. Fedorchak
Notary Public-Connecticut
My Commission Expires
November 30, 2011